



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 14, 2021

VIA ECF

The Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

MEMO ENDORSED

Re: *United States v. Jesse Rodriguez, 18 Cr. 488*

Dear Judge Swain:

The Government writes to respectfully request that the Court appoint Dr. William P. Milberg, pursuant to 18 U.S.C. § 4241(b), to conduct an examination and prepare a report regarding the defendant's current mental state, in order to inform the Court's determination as to the defendant's competency to stand trial.¹ Dr. Milberg's expertise in memory disorders, including Wernicke-Korsakoff syndrome, were detailed in the Government's January 4, 2021 letter to the Court. (ECF No. 94). The Government has conferred with defense counsel on numerous occasions regarding the Government's proposal. Defense counsel has indicated that the defense has no objection regarding Dr. Milberg's qualifications, but continues to object to any further evaluation that will result in delay of the defendant's competency hearing.

In light of the foregoing, and in the interest of moving expeditiously, for the reasons stated in the Government's December 16, 2020 letter to the Court, (ECF No. 92), the Government respectfully proposes that the Court appoint Dr. Milberg prior to the parties' scheduled January 25, 2021 conference date so that he may begin reviewing the defendant's medical records immediately. Enclosed with this letter is a proposed order for the Court's consideration.

Should the Court enter the proposed order appointing Dr. Milberg, the Government submits that no conference is required on January 25, 2021, as the parties have no new issues to discuss prior to the completion of Dr. Milberg's report. The Government has consulted with defense counsel, who agrees with the Government's proposal.

¹ Given that Dr. Milberg has not previously opined on a defendant's mental competency to stand trial in a criminal matter, the Government, after consultation with defense counsel, does not propose that Dr. Milberg opine on the ultimate issue of the defendant's competency. Instead, the Government seeks to have Dr. Milberg appointed to opine on the defendant's mental state and long-term treatment options. Notwithstanding this limitation, the Government maintains that Dr. Milberg's evaluation and report will have significant value with respect to the findings this Court must make regarding the defendant's competency.

The parties instead propose that the Court adjourn the January 25, 2021 conference; set a deadline of April 9, 2021 for the parties to submit a joint letter regarding their respective positions in light of Dr. Milberg's report; and calendar a date for the defendant's competency hearing between April 19-27, 2021.²

The Government further requests that, to the extent time is not automatically excluded under the Speedy Trial Act, *see* 18 U.S.C. § 3161(h)(1)(A) (excluding "delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant"), that the Court exclude time from today's date to the date of the scheduled competency hearing to facilitate the completion of Dr. Milberg's evaluation.

Respectfully submitted,

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Acting United States Attorney

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Cc: Clay Kaminsky (via ECF)
Sylvie Levine (via ECF)

The foregoing requests are granted. The competency hearing will take place on April 21, 2021, at 9:00 a.m.. The Court finds pursuant to 18 U.S.C. §3161(h)(7)(A) that the ends of justice served by an exclusion of the time from today's date through April 21, 2021, outweigh the best interests of the public and the defendant(s) in a speedy trial for the reasons stated above. DE#96 resolved.

SO ORDERED.

Dated: 1/15/2021

/s/ Laura Taylor Swain
Laura Taylor Swain, USDJ

² The parties intend to address at the competency hearing whether any post-hearing briefing is warranted.